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Attorneys for Defendant Nwogo N. Agbasi, M.D.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

	:
C.D. , a minor by and through :	
his Natural parents and Guardian ad :	HONORABLE
Litems, Shawn Duffy and Katherine :	
Hermansen,	:
Plaintiff,	:
	:
v.	: Civil Action No.
	:
Nwogo N. Agbasi, M.D., et al.	: NOTICE OF REMOVAL
	:
Defendants.	:
	:

TO: Patrick T. D’Arcy, Esquire
D’ARCY JOHNSON DAY
3120 Fire Road, Suite 100
Egg Harbor Township, NJ 08234
Attorneys for Plaintiff

Eric M. Wood, Esquire
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1301 Atlantic Avenue
Midtown Building, Suite 400
Atlantic City NJ 08401-7212
Attorney for Defendant Atlantic Regional Medical Center

PLEASE TAKE NOTICE that this case, previously pending in the New Jersey Superior Court, Law Division, Atlantic County, Docket No. L-0597-16, is hereby removed to the United States District Court for the District of New Jersey, pursuant to 42 U.S.C. § 233(c). The United States of America is hereby substituted for removing Defendant Nwogo N. Agbasi, M.D. (“Federal Defendant”), pursuant to 42 U.S.C. § 233(c) and (g), with respect to all of the claims set forth against those parties in the Amended Complaint. The United States of America, by and through its undersigned attorneys, respectfully states the following in support of the removal of this matter:

1. The Complaint was filed in the New Jersey Superior Court, Law Division, Atlantic County, on or about March 18, 2016. See Exhibit A (State Court Docket). An Amended Complaint was filed in the New Jersey Superior Court, Law Division, Atlantic County, on or about April 14, 2016. Although Plaintiff has requested the entry of default against Dr. Agbasi, default has not been entered and the trial has not yet occurred. See Docket, Ex. A. Service of process has not been effected upon the Federal Defendant in the manner specified in and required under Fed. R. Civ. P. 4(i).
2. Plaintiffs have filed this civil action seeking damages from the Federal Defendant for personal injuries they allegedly sustained as the direct and proximate result of the Federal Defendant’s alleged negligence (i.e., medical malpractice). See Exhibit B (Complaint), Exhibit C (Amended Complaint).
3. At all times relevant to this Complaint, the Federal Defendant was deemed an employee of the United States pursuant to 42 U.S.C. § 233(g). See Exhibit D (Declaration of Meredith Torres with attached exhibit).

4. This action is deemed to be an action against the United States because the Federal Defendants were acting within the scope of employment as employees of the United States pursuant to 28 U.S.C. § 2679(d) and 42 U.S.C. § 233(c). See Exhibit E (Certification of Scope of Employment).

5. Sections 233(a) and (g) of Title 42 of the United States Code, as amended by the Federally Supported Health Centers Assistance Act of 1995 (Public Law 104-73) provide that the Federal Tort Claims Act (“FTCA”) is the exclusive remedy for tort claims against the United States.

6. The United States District Courts have exclusive jurisdiction over tort actions filed against the United States under the FTCA. 28 U.S.C. § 1346(b).

7. Counsel for co-Defendant Atlanticare Regional Medical Center has consented to the removal of this matter to federal court.

8. This Notice of Removal will be filed with the Clerk of the New Jersey Superior Court, Law Division, Atlantic County, and will be served on all parties in accordance with 28 U.S.C. § 1446(d). See Exhibit F (Letter to Clerk of New Jersey Superior Court).

PAUL J. FISHMAN
United States Attorney

s/Anne B. Taylor
By: ANNE B. TAYLOR
Assistant U.S. Attorney

Dated: July 8, 2016